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September 5, 2006

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U.S. Department of Transportation  
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Washington, DC 20590-0001

RE: FHWA Docket No. FHWA-2005-22986

We offer the following comments on the proposed rules for Statewide Transportation Planning; Metropolitan Transportation Planning, FHWA Docket No. FHWA-2005-22986.

The Metropolitan Transportation Commission (MTC) is the Metropolitan Planning Organization (MPO) for the nine-county San Francisco Bay Area. MTC appreciates the opportunity to comment on the Federal Highway Administration and Federal Transit Administration's "Statewide Transportation Planning; Metropolitan Transportation Planning; Proposed Rule" issued on June 9, 2006. MTC also thanks the United States Department of Transportation (USDOT) for holding workshops on this topic and would like to acknowledge its staff's assistance during the implementation of SAFETEA.

MTC welcomes this proposed rule as an important means to clarify and consolidate changes in metropolitan transportation planning resulting from two transportation acts: SAFETEA and the prior TEA-21, as well as numerous guidance issued over the past 12 years. Our comments aim to see through an interpretation of statute that recognizes the diversity of MPOs throughout the country by providing flexibility in these regulations. This approach would be conducive to permitting state department of transportation agencies, MPOs and the USDOT to fine-tune their planning and programming processes based on prior experience and making the best of a given agency's individual situation and resources, leading to the highest levels of effectiveness and efficiency. As such MTC's attached comments identify those areas in the proposed rules where we have suggestions regarding the ability to flexibly manage the Metropolitan Transportation Plan and Transportation Improvement Program while ensuring the overall integrity of the planning process.

Thank you for the opportunity to submit comments to you as part of the rulemaking process. If you have any questions about these comments, please feel free to contact Alix Bockelman, Director of MTC's Programming and Allocations Section at (510) 817-5850, or via email at [abockelman@mtc.ca.gov](mailto:abockelman@mtc.ca.gov)

Sincerely,

  
Steve Heminger  
Executive Director

**Attachment**

cc: Caltrans, HQ Local Assistance  
AMPO  
AASHTO  
FHWA, CA Division

## MTC Comments

### Statewide Transportation Planning; Metropolitan Transportation Planning Proposed Rules

Section	Proposed Language	MTC Staff Comments & Requested Changes
<b>Subpart A – Transportation Planning and Programming Definitions</b>		
§450.104 Definitions	<b>Administrative Modification</b> means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is not significant enough to require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). Examples of administrative modifications include minor changes in the cost or initiation date of included projects.	<p>While no precise definition is being proposed, we appreciate that the definition allows flexibility on deciding where the threshold lies between an “administrative modification” and an “amendment”. However, we recommend that the examples of administrative modifications be expanded to include changes in costs that are accompanied by a finance plan and do not affect conformity determination or fiscal constraint. Mega-transportation projects such as the San Francisco-Oakland Bay Bridge East Span Replacement may experience project cost changes; however, if the finance plan for the project identifies the cost change and demonstrates how the cost change will be wholly addressed via alternative revenue sources without impacting any other projects in the TIP, then this cost change should fall under the definition of an administrative modification.</p> <p>With respect to the TIP, there are advantages in the current definition because it allows future flexibility on deciding where the threshold lies between an “administrative modification” and an “amendment”. This is best decided, as it has in the past in our region, through a negotiated process resulting in criteria developed by each state or MPO, as applicable in consultation with FHWA and FTA. This approach allows for a definition that can be tailored to the situation of each state and MPO.</p> <p><b>MTC Proposed Changes</b> (new text shown in <i>italics and bold</i>):</p> <p style="padding-left: 40px;">Administrative modification means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is not significant enough to require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). Examples of administrative modifications include minor changes in the cost, <i><b>design concept, design scope,</b></i> or initiation date of included projects, <i><b>or changes in cost that are accompanied by a finance plan and do not affect conformity determination or financial constraint.</b></i></p>
§450.104 Definitions	<b>Amendment</b> means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is significant enough to require public review and comment, redemonstration of fiscal constraint, and/or a conformity determination (in nonattainment and maintenance areas). Examples of amendments include the addition or deletion of a regionally significant project, or a substantial change in the cost, design concept, or design scope of an included project.	<p>We do not propose any wording change to this definition.</p> <p><i>See staff comments above regarding the distinction between “administrative modification” and “amendment”.</i></p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
§450.104 Definitions	<b>Consultation</b> means that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about actions(s) taken.	We appreciate that this definition is broadly defined and not overly prescriptive. While some would prefer further clarification on what is meant by “confer with other parties” and “established process”, we believe that the definition is sufficient and there is no need to set new standards or threshold requirements on how to do consultation for a metropolitan transportation plan, TIP or STIP. We propose making no changes to this definition.
§450.104 Definitions	<b>Environmental mitigation activities</b> means strategies, policies, programs, actions, and activities that, over time, will serve to avoid, minimize, rectify, reduce, or compensate for (by replacing or providing substitute resources) the impacts to or disruption of elements of the human and natural environment associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan. The human and natural environment includes, for example, neighborhoods and communities, homes and businesses, cultural resources, parks and recreation areas, wetlands and water sources, forested and other natural areas, agricultural areas, endangered and threatened species, and the ambient air. The environmental mitigation strategies and activities are intended to be regional in scope, even though the mitigation may address potential project-level impacts. The environmental mitigation strategies must be developed in consultation with Federal, State, and Tribal wildlife, land management, and regulatory agencies during the statewide and metropolitan transportation planning processes and be reflected in all adopted transportation plans.	<p>In California, long-range metropolitan plans are subject to the California Environmental Quality Act, and that California MPOs follow the public notification and consultation procedures established in CEQA, which include a determination of the scope and nature of appropriate environmental mitigations. The CEQA process would therefore be California MPOs’ established process for evaluating and consulting on environmental mitigations. Thus, we recommend that this definition be modified to account for California’s and other State’s environmental processes.</p> <p><i>See related comments under §450.322.</i></p> <p><b>MTC Proposed Changes</b> (new text shown in italics and bold):</p> <p>The environmental mitigation strategies must be developed in consultation with Federal, State, and Tribal wildlife, land management, and regulatory agencies <b><i>in accordance with an established process, such as that defined in State environmental law</i></b>, during the statewide and metropolitan transportation planning processes and be reflected in all adopted transportation plans.</p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
§450.104 Definitions	<p><b>Financially constrained or Fiscal Constraint</b> means that each program year in the TIP and the STIP includes sufficient financial information for demonstrating that projects can be implemented using current and/or reasonably available revenues, by source, while the entire transportation system is being adequately operated and maintained. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are “available or committed.”</p>	<p>This definition of fiscal constraint is unclear and does not adequately address a long-range metropolitan plan. For example, the phrases “each program year” and “by source” are only applicable to the TIP and STIP, and should therefore be identified in those specific sections of the regulations and not up front in the definitions section. Additionally, we recommend clarification that illustrative projects are not included when demonstrating financial constraint.</p> <p>We recommend deleting this definition in its entirety and replacing it with an alternative definition of Financially Constrained or Fiscal Constraint, as follows below:</p> <p><b>MTC Proposed Changes</b> (new text shown in italics and bold):</p> <p><i><b>Financially constrained or Fiscal Constraint means that a long-range metropolitan transportation plan, TIP, or STIP can be implemented using revenues from public and private sources that are current and/or reasonably expected to be made available for transportation uses to carry out the plan over the period of the plan, while the entire (existing plus planned) transportation system is being adequately operated and maintained. Adequate levels of operations and maintenance are to be determined by local officials, who may decide to defer maintenance and/or increase operating revenues as a means of balancing their budgets. Illustrative projects are not part of financially constrained plans.</b></i></p> <p>Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are “available or committed.”</p> <p><i>Regarding adequate operations and maintenance of the transportation system, see our related comments under “System Preservation.”</i></p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
§450.104 Definitions	<p><b>Financial plans</b> means documentation required to be included with metropolitan transportation plans, TIPs, and STIPs that demonstrates the consistency between reasonable available and projected sources of Federal, State, local, and private revenues and the costs of implementing proposed transportation system improvements, as well as operating and maintaining the entire transportation system.</p>	<p>This definition's wording is unclear. We prefer the TEA-21 language that more clearly describes the purpose and content of a financial plan for long-range plans, as follows:</p> <p>“Include a financial plan that demonstrates the consistency of proposed transportation investments with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan.”</p> <p>Furthermore, SAFETEA language also more clearly describes the purpose and content of a financial plan for long-range plans, as follows:</p> <p>“A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.”</p> <p>Therefore we recommend deleting this definition in its entirety and replacing it with an alternative definition of Financial Plans, as follows below.</p> <p><b>MTC Proposed Changes</b> (new text shown in italics and bold):</p> <p>Financial plans means documentation required to be included with metropolitan transportation plans, and TIPs that demonstrates the consistency <i>of the proposed transportation investments with already available and projected sources of public and private revenues. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the entire (existing plus planned) transportation system over the period of the plan. The TIP shall be consistent with the financial plan for the metropolitan transportation plan.</i></p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
§450.104 Definitions	<p><b>Regionally significant projects</b> means a transportation project (other than projects that may be grouped in the STIP or TIP pursuant to § 450.216 and § 450.324 or exempt projects as defined in EPA’s transportation conformity regulation (40 CFR part 93) that is on a facility which serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area’s transportation network. At a minimum, this includes all capacity expanding projects on principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.</p>	<p>The definition of “regionally significant projects” is very important because (1) when the MPO adds or deletes a regionally significant project to/from the RTP, this constitutes a RTP amendment, and (2) when the MPO prepares the conformity analysis, it needs to identify which projects are regionally significant and make sure that they are coded properly in the network in terms of project definition and analysis year. However we find the phrase “all capacity expanding projects” to be overly broad and problematic. Not all capacity expanding projects are “codeable” in our regional networks, including auxiliary lanes that expand capacity on highways/freeways. This determination is most appropriately made in the framework of our region’s interagency air quality conformity consultation process.</p> <p>Furthermore, we are concerned that the proposed definition will differ from the one promulgated by the conformity regulations (40 CFR 93.101) leading to potential conflicts. Consequently, we strongly recommend using EPA’s exact definition of regionally significant for conformity analysis purposes as a substitute for the second half of the definition, as follows below.</p> <p><b>MTC Proposed Changes</b> (new text shown in italics and bold):</p> <p>Regionally significant projects means a transportation that... and would normally be included in the modeling of the metropolitan area’s transportation network, <b><i>including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.</i></b></p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
<b>Subpart B – Statewide Transportation Planning and Programming</b> (also see cross-references for the STIP under Subpart C that also apply)		
§450.218 (a)	The proposed revision would now require joint approval by FHWA and FTA for all amendments to the STIP.	Currently joint approval is required “as necessary,” which permits the State to seek approval from FHWA or FTA individually for amendments that involve a project(s) that falls under the authority of only one of these agencies. Therefore it is less efficient to impose this one-size-fits-all approach on the STIP amendment process that will result in higher workloads for FHWA and particularly FTA.  We therefore request that the proposed regulation be revised by adding language that retains current flexibility.
<b>Subpart C – Metropolitan Transportation Planning and Programming</b>		
§450.316(a) Interested parties, participation, and consultation	The MPO shall develop and use a documented participation plan that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, agencies or entities responsible for safety/security operations, providers of non-emergency transportation services receiving financial assistance from a source other than 49 USC, Chapter 5.3, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.	We support the U.S. DOT’s efforts to implement SAFETEA’s call for more involvement by the public in the key transportation planning and investment decisions that affect them.  Please provide clarification in the proposed regulations whether the ISTEA requirement for the Federal Public Involvement Procedures remains or is replaced by the new “Public Participation Plan.” We recommend that the U.S. DOT should eliminate the former in light of the new Public Participation Plan requirement. Additionally the difference is between “freight shippers” and “providers of freight transportation services” is unclear.
§440.316 (b)	In developing metro plans and TIPs, MPOs must consult with agencies/officials responsible for other planning activities within the MPA affected by transportation. This consultation shall compare metro plans and TIPs, as they are developed, with plans, maps, inventories and planning documents developed by other agencies. This consultation shall include contacts with state, local, Indian tribal, and with private agencies responsible for planned growth, economic development, environmental protection, airport operations, freight movements, land-use management, natural resources, conservation and historic preservation. Plans and TIPS shall be developed with	The proposed regulation does not differentiate between the level of effort and nature of involvement of other interested planning officials in the development of the Plan versus that of the TIP. Indeed there is a continuum of consultation beginning with the Regional Transportation Plan, which is the MPO’s primary policy document regarding transportation investment decisions and accompanying project design and scope determinations. From the RTP, investment decisions flow to the TIP stage, which comprise smaller-scale programming decisions, involving project phasing, budget, and schedule. “Consultation” as defined by the proposed rules makes the greatest sense at the Plan stage and also during the development of the NEPA environmental document.  Furthermore, the intent of SAFETEA was to require different levels of agency consultation effort required for the Transportation Plan and the TIP. The legislation requires “consultation” for the Plan, but only a “reasonable opportunity to comment” for the TIP. The legislative language in SAFETEA Section 6001 §134(g)(3) states that the: Secretary shall <i>encourage</i> (italics added) each metropolitan

Section	Proposed Language	MTC Staff Comments & Requested Changes
	<p>due consideration of other related planning, and the process must provide for the design and delivery of transportation services in the area that are provided by: (1) recipients of assistance under title 49, USC, Ch. 53, govt. agencies and nonprofits that receive federal aid from a source other than U.S. DOT to provide non-emergency transport services, recipients under 23 USC 204.</p>	<p>planning organization to consult with officials responsible for other planning activities....” but does not <i>require</i> consultation. Furthermore, §134 (i)(4)(a) states that consultation is required (“shall consult”) for the RTP. However for the TIP, SAFETEA does not call out such extensive consultation activities with other planning agencies. Instead §134 (j)(1)(b) states that for the TIP the MPO shall provide reasonable opportunity to comment by interested parties.</p> <p>Language should clarify that “consultation” is required for the RTP, but for the TIP a reasonable opportunity to comment will be required to be sufficient. This contrasts with the proposed regulation that does not differentiate, instead requiring the more extensive “consultation” at both stages.</p>
<p><b>§450.320</b> Congestion management process in transportation management areas</p>	<p>Entire section.</p>	<p>This proposed regulation is largely consistent with current regulations for congestion management systems (CMS). Our only comment here is that the current regulation uses the term “congestion management systems (CMS)” so it may be better to continue to use this term rather than introduce new terminology, since there are no substantive changes between congestion management program (CMP) and CMS. Furthermore, the new term would be confusing since California statute establishes congestion management programs.</p>



Section	Proposed Language	MTC Staff Comments & Requested Changes
<p>§450.322 (7) Development and content of the metropolitan transportation plan</p>	<p>A discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation.</p>	<p>SAFETEA language includes the phrase “types of” when describing environmental mitigation, shown in bold as follows:</p> <p style="padding-left: 40px;">A long-range transportation plan shall include a discussion of <b>types of</b> potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.</p> <p>The proposed rule deletes “types of” from this phrase. This implies that identifying the <i>types of</i> mitigation is not sufficient. Therefore we recommend the following revision, which would make it consistent with the SAFETEA language, as follows below:</p> <p><b>MTC Proposed Changes</b> (new text shown in italics and bold):</p> <p style="padding-left: 40px;">A discussion of <i><b>the types of</b></i> potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan.</p> <p>In addition, we recommend acknowledgement of state environmental acts (i.e. CEQA in California) that are currently accomplishing the intent of this regulation. Consider revising the regulation as follows below:</p> <p><b>MTC Proposed Changes</b> (new text shown in italics and bold):</p> <p style="padding-left: 40px;">The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies <i><b>in accordance with an established process, such as those in a State environmental law.</b></i></p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
<p>§450.324 (a) Development and Content of the Transportation Improvement Program (TIP)</p> <p>Comments also apply to 450.216 (a) for the STIP</p>	<p>The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall cover a period of not less than four years, be updated at least every four years, and be approved by the MPO and the Governor. If the TIP covers more than four years, the FHWA and the FTA will consider the projects in the additional years as informational.</p> <p>23 USC 134 (j) (2) (B) (iv) states the financial plan for the TIP “may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.</p> <p>And</p> <p>23 USC 134 (j) (6) (B) states that “Action by the Secretary shall be required for a state or MPO to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2) (B) (iv) (see above) for inclusion in an approved TIP.</p>	<p>There is a crucial need for the ability of FHWA/FTA to approve a MPO’s request to include a fifth year in the TIP if justified by adequate revenues to allow the ability of the MPO to advance projects during the fourth year of the TIP via the expedited project selection process. Each year in a four-year TIP allows advancement of programmed funds between the years except in the fourth year. For a region like MTC where the ability to advance projects is a key management tool for the use of obligational authority, many projects are anticipated to be advanced, when the fourth year arrives and there are not a sufficient number of projects in the fourth year of the TIP to utilize the remaining OA. Also at that time, if for any reason, a project is delayed and cannot be obligated, this will provide a reservoir of ready-to-go projects to be advanced via the expedited project selection.</p> <p>The language in the proposed regulation is an overly interpretation of SAFETEA legislation, the former stating that FHWA/FTA would consider any year beyond the fourth as informational only. 23 USC 134(j)(2)(B)(iv) states the financial plan for the TIP “may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available. And 23 USC 134 (j) (6) (B) states that “Action by the Secretary shall be required for a state or MPO to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2) (B) (iv) (see above) for inclusion in an approved TIP. By deduction, we believe that this provides the authority for FHWA/FTA to approve a fifth year of projects as part of the TIP and we urge that FHWA/FTA permit and clarify this in the proposed regulations.</p>
<p>§450.324 (h)</p>	<p>The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs.</p>	<p>The TIP is legally required to be consistent with the Financial Plan for the long-range Transportation Plan, the latter document demonstrating all the requirements set forth in this proposed regulation. Please clarify how the requirement for the TIP to have a similar financial plan for the same period covered by the Plan is a meaningful one. This requirement needs to acknowledge the primacy and value of the financial plan in the RTP; therefore, we recommend the language change below (changes are in bold and italic):</p> <p><b><i>“The TIP shall be consistent with the financial plan for the long-range plan, which shall demonstrate</i></b> how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs.</p>
<p>§450.324 (i) (existing reg.)</p>	<p>The TIP shall be fiscally constrained ... while showing that the entire transportation system is being adequately operated and maintained. (This is amplified on in Appendix B.)</p>	<p>Requirements to analyze the sustainability and operations of the transportation system should be applied to the Plan stage, as sustainability issues usually exceed the 4-year TIP time frame and this is where tradeoffs between operations, maintenance, and system expansion are made.</p> <p><i>See our discussion of this issue under “System Preservation.”</i></p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
<p>Section-by-section discussion</p> <p>§450.324</p>	<p>US DOT inviting comments on whether the agencies should require MPOs submitting TIP amendments to demonstrate that funds are “available or committed” for projects identified in the TIP in the year the TIP amendment is submitted and the following year.</p>	<p>This change could trigger a comprehensive re-analysis of the financial assumptions underlying the entire TIP every time there is an amendment including “administrative modifications.” MTC would view this change as exceeding what was envisioned in statute.</p> <p>However, there is a more appropriate time to demonstrate fiscal constraint of the TIP, rather than during the TIP revision process. Specifically, the fiscal constraint analysis for a TIP amendment should focus on the incremental costs and revenues associated with the amendment, but not re-open the constraint analysis for the overall TIP. Instead we recommend that an overall fiscal constraint analysis be conducted at the start of every two-year period, beginning with the adoption of the TIP and then two years later consistent with existing 23 CFR 324 (i)</p> <p>Consequently, MTC answers “no” to this question.</p>
<p>§450.326 (a) TIP revisions and relationship to the STIP.</p>	<p>Public participation procedures shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications that only involve projects of the type covered in 450.324 (f)</p>	<p>There is a broad range of minor revisions to the TIP that qualify as administrative modifications besides the” Lump sum” projects. This category alone is extremely restrictive. We therefore request that any revision to a project when revising the TIP that qualifies as defined under the definition of an administrative modification should be exempted from the public participation procedures. Specifically, remove the following language “that only involve projects of the type covered in 450.324 (f).”</p>
<p>Section-by-section discussion</p> <p>§450.330</p> <p>Comments also for §450.220 (e) for STIP</p>	<p>Should MPOs prepare an agreed to project list annually at beginning of each year in 4-year TIP/STIP or only first year?</p> <p>Should STIP/TIP amendment be required to move a project between years in the TIP/STIP?</p>	<p>The Expedited project selection process helps to move/ advance project funding within the TIP years without the need for an amendment. This proposal would frustrate the “expedited project selection process.”</p> <p>Also, the unhampered ability to move projects between years in the TIP/STIP is necessary in order for effective management of programs that require frequent adjustments to project timing resulting from project delivery concerns (i.e. environmental review, program fund management)</p> <p>MTC answers “no” to both of these questions and advises maintaining the status quo.</p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
<p>§450.332 (a) Annual Listing of Obligated Projects</p>	<p>In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the State program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C., Chapter 53 were obligated in the preceding program year.</p>	<p>MTC's main concern about this list remains the process to acquire timely project obligation data that will enable the list to be produced accurately and efficiently. MTC cannot directly access obligation data, which is stored and managed by the FHWA and FTA databases (TEAM and FEMIS, respectively). Consequently regulations should require that FHWA/FTA provide the obligation data needed to produce the listing to each state for dissemination to the MPO for preparation and publishing of the annual listing.</p> <p>Furthermore the requirement that MPOs develop a list no later than 90 calendar days following the end of the State program year (June 30 in California) is not reasonable. Despite the state-programming year ending in June, obligations continue through September. As a result, an accurate and complete final report on obligations for the preceding year would not be available until October/November at the earliest. The proposed rule needs to be revised to set a deadline at least 90 days from the close of the federal programming year, in order to provide MPOs sufficient time to receive obligation data from the State DOT and publish the annual listing of obligated projects for the public.</p> <p>The regulation should read “... <i>no later than 90 days following the end of the federal program year</i> ...”</p>
<p>§450.338 Phase-in of new requirements  And 450.224 For the STIP</p>	<p>(a) Prior to July 1, 2007, metropolitan transportation plans and TIPs under development since August 10, 2005, may be completed under TEA-21 requirements. Metropolitan transportation plans and TIPs may also reflect the provisions of this part prior to July 1, 2007, but cannot take advantage of the extended update cycles (e.g., four years for TIPs and four years for metropolitan transportation plans in nonattainment and maintenance areas) until all provisions and requirements of this part are reflected in the metropolitan transportation plan and TIP.</p> <p>(b) For metropolitan transportation plans and TIPs that are developed under TEA-21 requirements prior to July 1, 2007, the FHWA/FTA action (i.e., conformity determinations and STIP approvals) must be completed no later than June 30, 2007. For metropolitan transportation plans in attainment areas that are developed under TEA-21 requirements prior to July 1, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the metropolitan transportation plan or TIP were developed.</p>	<p>This section outlines timetable expectations regarding the phase-in of the Metropolitan Transportation Plan and TIP by the MPO. Most notably, the regulations do not acknowledge important clarifications regarding this issue that were promulgated in guidance issued by FHWA/FTA on December 8, 2005 and subsequently on May 2, 2006, in response to numerous concerns. In the meantime, MTC and other MPOs have received clarification that 1) a MPO need not deviate from established update cycles per statute (Section 3005 (b) of SAFETEA) and that 2) after July 1, 2007, a SAFETEA compliant TIP will be permitted to undergo significant revisions including air quality conformity determinations absent a SAFETEA compliant RTP provided a valid RTP is in place. We therefore request confirmation in regulation that FHWA/FTA will be able to approve SAFETEA compliant TIPs and their amendments, including conformity determinations where applicable, TIPs/STIPs on or after July 1, 2007, even if they are based on TEA-21-compliant long-range plans.</p> <p>Lastly we are seeking clarification in the regulations, to essentially decouple the State's FSTIP SAFETEA compliance from the MPO's TIP compliance requirements to ensure that non-compliant TIPs in the State do not affect SAFETEA compliant TIPs in other areas of the State. This flexibility is also required to ensure that one region's failure in the State to meet SAFETEA will not prevent the state department of transportation from adopting a SAFETEA compliant STIP, which would effectively block the SAFETEA compliant MPO's from implementing SAFETEA provisions in their TIPs, specifically the four-year list of projects.</p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
System Preservation	System Maintenance, Operations, and Preservation (Appendix B, 450.206, and 450.324 and in various other sections)	<p>Our concern is that the analysis to establish the entire transportation system is being adequately operated and maintained is not supported by statutes and, if necessary, is best undertaken as part of the framework of the Regional Transportation plan as required in Rule 450.322 (f)(10) and not the TIP. This requirement raises troublesome questions as to what should be under the purview of the federal government with respect to maintenance on a region's transportation network, which remain unanswered in the NPRM.</p> <p>We argue that any interest to ascertain the sustainability of the transportation system be best accomplished at the Plan stage. Firstly, the TIP, a subset of federally funded projects and regionally significant projects, is derived from the transportation investments determined during the development of the plan. It is the plan phase, where the project and design scope of the investment is established. Secondly, replacement cycles of vehicles, pavement, and other capital investments well exceed the TIP's four-year time horizon. Four years is a relatively small-time frame in which to make determinations on whether the operation and maintenance of a system is sustainable. Instead at the TIP stage, FHWA should focus on the sustainability of the specific transportation investments listed in the TIP as supported by the language in 23 USC 134 (h)(2) requiring that the financial plan for the TIP "demonstrate how the transportation improvement program can be implemented".</p> <p>If at the time the Draft TIP is reviewed, if FHWA/FTA hold concerns about specific capital investments of a major magnitude that potentially jeopardize the maintenance and operation of the existing transportation system, we offer that FHWA and FTA may request a targeted analysis, to address those concerns rather than requiring an obscure blanket analysis, in the TIP to establish the adequate maintenance and operations of the entire transportation system.</p> <p>Lastly, we request regulatory language that mirrors the Fiscal Constraint Guidance issued in June 2005 stating that "FHWA and FTA do not mandate a particular, specific level of operations or maintenance" and "FHWA and FTA do not second-guess a State DOT's or MPO's decisions regarding uses of funding, nor would we question the priorities a State DOT or MPO has set with respect to maintenance and operation of the existing transportation system and construction of new projects."</p>
Incorporation of Appendices A and B into regulation	The NPRM propose to incorporate Appendices A and B into regulation	<p>The Appendices "A" and "B" should not be directly incorporated into the regulations. Instead, specific provisions that are supported by statute should be included in the regulations themselves. The inclusion of prior guidance entirely into the regulations is problematic for several reasons. First of all the appendix structure is does not lend itself to regulatory citations or future revision, which are easier to approach from a systematic codification as opposed to an entire appendix. Furthermore, MTC is concerned that the incorporation of "guidance" directly into regulation skips the important step of discerning between provisions that find their basis in federal statutory law, are essential, and are suitable to become part of the Official Code of Federal Regulations; and those that originate from FHWA/FTA guidance that address best practices and interpretations, which often do not have a direct statutory basis. Furthermore, the regulations should not be used to impose new mandates that go beyond the requirements of the statute. Direction not found specifically in the statutes should remain in guidance form. Lastly, "Guidance" is best kept in guidance format, because it can be readily changed without triggering the more involved federal rulemaking process.</p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
<b>Appendix A</b>		
Appendix A to Part 450 – Linking the Transportation Planning and NEPA Processes	Implementation of this Appendix by States, MPOs, and public transportation operators is voluntary. The degree to which studies, analyses, or conclusions from the transportation planning process can be incorporated into the project development/NEPA processes will depend upon how well they meet certain standards established by NEPA regulations and guidance. While some meet these standards, others will need some modification.	Guidance documents should not be included in the regulations, especially as this guidance is voluntary. Instead the regulations themselves should establish the basic framework for conducting optional planning-level studies that can be relied upon as the basis for defining the scope of NEPA reviews. We share the concerns expressed by other federal, state and regional agencies that great care must be taken to avoid “NEPA-izing” the statewide and metropolitan planning process. Consequently, we suggest that Appendix A be removed from the regulations.

Section	Proposed Language	MTC Staff Comments & Requested Changes
<b>Appendix B</b>		
Appendix B to Part 450 – Fiscal Constraint of Transportation Plans and Programs [Revised]	<p>Background</p> <p>To support air quality planning under the 1990 Clean Air Act Amendments, a special requirement has been placed on air quality nonattainment and maintenance areas, as designated by the U.S. Environmental Protection Agency (EPA). Specifically, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are “available or committed”.</p> <p>In cases that the FHWA and the FTA find a metropolitan transportation plan or TIP/STIP to be fiscally constrained and a revenue source is subsequently removed (i.e., by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. In such cases, the FHWA and the FTA will require the State DOT or MPO to identify alternative sources of revenue as soon as possible. Importantly, the FHWA and FTA will not act on new or amended metropolitan transportation plan, TIP, or STIP unless they reflect the changed revenue situation.</p> <p>The same policy applies if project costs or operations/maintenance cost estimates change after a metropolitan transportation plan, TIP, or STIP are adopted. Such a change in cost estimates does not invalidate the adopted transportation plan or program. However, the revised costs must be provided in new or amended metropolitan transportation plan, TIP, or STIP. The FHWA and the FTA will not approve new or amended STIPs that are based on outdated or invalid cost estimates.</p>	<p>Guidance documents should not be included in the regulations, especially as this guidance delves into the finer details about fiscal constraint. Instead the regulations themselves should establish the basic framework for fiscal constraint of long-range metropolitan plans and TIPs. This guidance should be issued separately in draft form following final action on these regulations, and that federal, state and regional agencies have the opportunity to discuss them in greater detail within the context of the adopted regulations.</p> <p>However, we would like to note our objection to the two policy statements described herein pertaining to FHWA and FTA actions on fiscal constraint issues. Major plan updates that occur every four years are the best opportunities for FHWA and FTA to review the revenue and cost assumptions underlying the entire long-range metropolitan plan, TIP, or STIP. As it applies to the TIP, we would offer that an overall fiscal constraint analysis be conducted at the start of every two-year period, beginning with the adoption of the TIP and then two years later, to allay any US DOT concerns regarding fiscal constraint. Once the original determination of fiscal constraint is made and subsequent “administrative modification” or “amendment” is required, FHWA and FTA should base their fiscal constraint finding on the incremental changes in costs or alternative revenue source associated with the plan revision. Specifically, changes in project costs that are accompanied by a financial plan that demonstrates how the cost change will be wholly addressed via alternative revenue sources should fall under the definition of an administrative modification. We believe that our proposed changes to the definition of administrative amendment should help to clarify this issue.</p>

Section	Proposed Language	MTC Staff Comments & Requested Changes
	<p>Funding Gaps</p> <p>Substantial investments have been made in highway and transit infrastructure. The short- and long-term needs for system preservation, operation, and maintenance can be enormous. Simply maintaining the existing system in a State or large metropolitan areas can demand billions of dollars in investments, while system expansion demands investments of a similar scale. At times, the combination of these competing demands can cause temporary shortfalls in a State's or MPO's budget. To the extent there appears to be shortfalls, the MPO or State DOT must identify a strategy to address these funding gaps prior to the adoption of an updated metropolitan transportation plan, TIP, or STIP (or the amendment of an existing metropolitan transportation plan, TIP, or STIP). The strategy may rely upon the past history of the State, MPO, or public transportation operator(s) to obtain funding. If the strategy relies on new funding sources, the MPO, State, public transportation operator(s) must demonstrate that these funds are "reasonably expected to be available."</p>	<p>We agree that given the mismatch between the many competing demands and the funds available to address them, the State DOT and MPO are indeed responsible for identifying the appropriate strategies to address gaps in funding. Furthermore, we believe it should be left to local officials to determine what are the "appropriate" levels of the maintenance of the highway and transit infrastructure. As such, we have proposed to add the following sentence to the definition of financial constraint that appears under the definition section of the rule, as follows below.</p> <p><i>Adequate levels of operations and maintenance are to be determined by local officials, who may decide to defer maintenance and/or increase operating revenues as a means of balancing their budgets.</i></p>

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